

State of the Judiciary  
Chief Justice Karla M. Gray, Montana Supreme Court  
Message to the Legislature  
March 12, 2001

Speaker McGee, President Beck, members of the 57th Montana Legislature, distinguished guests, ladies and gentlemen:

As the fourteenth Chief Justice of the Montana Supreme Court, I appreciate the special privilege of addressing this joint session of the Montana Legislature and, through you, the people of Montana. We are all at a special moment in history--the beginning of not just a new century, but a new millennium--a new millennium which arrived, we might all note, without the need for a single new law or court decision: a time to carry forward the best threads from the past and to forge strong new threads to solve the challenges Montana faces; and a time to look to the future with optimism, and with a renewed commitment to providing the people of Montana all they deserve from all of us in our respective roles under the Montana Constitution. I assure you that, like you, Montana's judges have made this commitment.

I want to start my remarks about the state of the judiciary today by saying that the judiciary in Montana is strong, in large part because of the high quality judges and justices Montanans have elected to serve them and the truly dedicated staff we have gathered to help us. The judiciary, at every level, is totally dedicated to providing all Montanans with the access to justice, and the administration of justice without delay, to which they are entitled by the Montana Constitution. And, because it is important for all of us to remember that my remarks are about the judiciary, and not just the Supreme Court, I've started a new tradition by inviting judges from the courts of limited jurisdiction and the district courts to join us here today. You'll notice I invited only a few judges from the other courts--in part because of space considerations in the chamber, but largely because of caseload and travel expense considerations. I've learned the practice in some states is to "pack the place" with robed judges for this event, but I was sure somehow that was not the thing to do here today!

I do want to visit with you about a number of matters this afternoon: first, the basic structure of our judiciary and the creative ways being undertaken at all levels to provide both timely and quality justice; second, the non-caseload challenges we face and what must be done to meet them; and third, one bill pending before you. I hope to be brief enough not to tax your "sitting" power!

At the first level of our currently 3-tiered judicial branch are the courts of limited jurisdiction--the justices of the peace, municipal court judges, and city court judges. Fifty-two women and fifty-six men currently serve as judges of these courts. They are the "front line" of Montana's courts, since they handle all civil cases involving not more than \$7,000, landlord/tenant disputes, traffic offenses and misdemeanor criminal cases. Indeed, these are the only courts with which most Montanans will ever have contact, as they handle the huge majority of the court cases in our state, some 274,440 having been filed in the year 2000. We're so fortunate to have such highly trained and dedicated judges resolving the vast majority of Montanans' legal disputes.

The next level of courts is the district courts, with their 40 judges (plus the statutory water court and workers' compensation court judges). The district courts--courts of general jurisdiction--handle every imaginable type of civil case, felony criminal cases, judicial review of final administrative decisions and appeals from the courts of limited jurisdiction; there were 31,545 filings in the district courts in 2000. This year, we have a record number--at least in recent years--of newly elected district court judges and, by all appearances, they will bring the same high quality and total commitment to their jobs that our more experienced district court, water court and workers' compensation court judges have long provided to the people of Montana.

The third level in our judicial branch of government is, of course, your Supreme Court, the court about which Montanans seem to know and understand the least. We are the "end of the road," the final arbiters of questions of Montana law. We are also the final protectors of the rights and freedoms Montanans provided to each of us in our 1972 Constitution. Unlike the federal and most state court systems, we must accept all appeals from all the district courts across the state, from everyday divorce cases and misdemeanor DUIs to cases of enormous statewide impact. This, of course, accounts for our heavy caseload. We also have original jurisdiction over certain kinds of matters, jurisdiction we exercise sparingly. In addition, we take very seriously the important work of disciplining lawyers who violate the rules of professional conduct in dealing with their clients, and have responsibility over a variety of other boards and commissions. I could go on about our other obligations, but suffice it to say we are a very busy and uncommonly productive court, dedicated to meeting our constitutional responsibilities to the people of Montana--the people who use their courts for the very purpose for which courts exist, to solve peoples' legal disputes--in a quality and timely way.

Perhaps even more important for you to know than this basic information about our courts, though, is what judges at all levels are doing to provide creative and/or more expeditious resolutions of cases and to be involved in their communities. There are scores of examples, but I'll give you just a few. One justice of the peace was instrumental in starting a mediation program for cases in his court, with volunteer mediators from the community and at no cost to the parties. The program has been a spectacular success, with between 60 and 70% of the cases in mediation being resolved there. The same judge went to a middle school, visited with the students about the need to make wise choices at all stages of life, and then conducted a formal sentencing--with all the trappings--of a youth who clearly had not made wise choices. I'm sure that visit had profoundly positive impacts on the young folks.

Our district court judges have become adept at using small amounts of locally available funds and obtaining grant monies to pilot innovative programs, especially those involving our youth. The District Court serving Richland, Dawson, McCone, Prairie and Wibaux Counties has implemented a "Youths Serving Communities" program which places juvenile offenders with tobacco, alcohol or gambling-related offenses into supervised community service. The program makes immediate consequences and accountability available in dealing with juvenile offenders and provides an honorable way for youths to pay for their mistakes. The same court established a youth offender and victim mediation program which brings offender and victim together to identify the harm to the victim, allow the offender to take responsibility for that hurt or harm and establish what the offender will do to "restore" the victim.

The District Court in Phillips County has expanded its court-appointed special advocate and guardian ad litem program (the CASA/GAL program) beyond child abuse and neglect cases to domestic relations cases involving children, relying entirely on volunteers. These CASA/GAL programs, which allow children's voices to be heard in the courtroom in the communities where they operate, are enormously helpful to the children, and also to judges in making appropriate decisions regarding children. The Yellowstone County District Court continues its long-successful Conference Committee which, with trained lay volunteers, decides the disposition of many youth offender cases and has collected over \$250,000 in restitution during its history. Several district courts have initiated youth drug courts which, although resource-intensive for all involved, more successfully address the youth's drug problem and result in more responsible and productive lives. Similarly, the Gallatin County District Court is in the second year of its successful Treatment Court, which is a drug court for adult offenders.

The Supreme Court has improved efficiency by starting a mediation process on appeal which resolves nearly 10% of our caseload, and by tightening up on the length of lawyers' briefs and on granting motions for extensions of time. And as we move into the future, it is clear that courts at all levels can and must do better at harnessing technology to help us move cases more quickly.

Our job at the Supreme Court is much broader than deciding cases, however. We are responsible for the overall administration of justice in Montana and for ensuring that all Montanans have access to justice and are treated fairly once in the courts. We tend that responsibility very seriously indeed. Last year, we created a Commission to Eliminate Gender Bias in the Courts, as a follow-up to the Final Report from our Gender Fairness Task Force which demonstrated bias against both women and men in certain aspects of the court system, and made recommendations for minimizing or eliminating that bias. The newly established Commission is to assist the Supreme Court in implementing those recommendations. And we will need to take the same steps in addressing any racial or ethnic bias as well, because we can't achieve equal justice under the law so long as inappropriate factors may influence decision making in any court action. We also created the Commission on Self-Represented Litigants to address the problems faced by people who can't afford a lawyer--or simply choose to proceed without one--in legal actions. These folks are involved in significantly increasing numbers of cases at all levels of Montana's courts; for example, about 23% of the Supreme Court's cases last year involved at least one unrepresented party. They need help in presenting their cases as well as possible so as to maximize their day in court and, in addressing that need, we also can decrease the problems self-represented folks can cause opposing parties and the courts themselves.

All our best efforts at better case management and innovative resolution of cases, however, can do little to meet what I think is one of the biggest challenges facing us as judges and justices: improving public trust and confidence in courts and the rule of law.

The late United States Supreme Court Justice Thurgood Marshall said, simply and profoundly, "The only real power we have as judges is the respect of the people." And that's the absolute truth. But people find it difficult to respect judges they never see, who seem isolated from the society around them and who do jobs which are little understood. As recent years have shown us, both nationally and in Montana, we clearly have much work to do in promoting public trust, and we will take up this challenge in a proactive way, especially at the Supreme Court, the part of government about which Montanans seem to know the least.

We must establish better communications and relationships with, and provide much more information to, the people we serve, and that includes all of you. As far as branch relationships go, you took the first--and much needed--step of creating the Law, Justice and Indian Affairs Committee last session and charging it as the official liaison between the legislative and judicial branches. I congratulate you on this important, future-oriented step, and look forward to working productively with the committee, as well as taking other steps to improve relationships between the branches. We all know that our system of separate but equal branches, with checks and balances on each other, creates inherent and inevitable tensions between our branches. But those tensions can be minimized if members of the judicial and legislative branches understand each other and our respective jobs better; keep in mind that we each leave each other some "clean up" work to do from time to time, because that's how checks and balances work; and refuse to contribute in any way to public distrust of each other, because doing so only heightens people's negative feelings about government in general.

But we also must ramp up in a major way our efforts to reconnect with the people of Montana. We must establish a Court website so that Montanans everywhere can learn about their justice system at all levels, how and why cases get to the Supreme Court and what our role and the role of the rule of law are in this great state and nation. We must speak to every civic group, service club and school class which will have us on these same subjects, to provide as much basic information as we can. We must do more "road shows" to other than the major cities, so people in places like Lewistown, Havre, Miles City, Glasgow, Sidney and Glendive can see an oral argument before their Supreme Court in person, and have a chance to meet us and discover that we're just like every other Montanan-- trying to do the best job we can at the particular job we do. And we must start a dialogue with Montanans as well, through "town meeting" type settings, where the people and their judges from all levels can come together, share information and concerns, and brainstorm together on making justice in Montana as effective and efficient as it can possibly be. I know that if we reach out in these ways, the people of Montana will reach back, and that our success in improving public trust and confidence in the courts will hugely outstrip the effort involved. And I pledge to you that we will begin our work in these areas before this year is out.

Finally, I want to address--and strenuously encourage your support for--one bill still pending in this Legislature which will greatly benefit our shared constituents, all the people of Montana. That bill is Senator Grosfield's SB 158, which will create an intermediate appellate court. In my view, and hopefully in yours, the need for this bill to resolve increasing delays faced by the people of Montana in obtaining a final resolution of their legal disputes is beyond dispute.

Our caseload at the Court increased last year by nearly 20%, and our backlog of cases is now nearing 600. Some like to say that we bring this caseload on ourselves and, to a limited extent, that may be true because all changes in the law have the potential of engendering a few additional lawsuits; of course, the converse is also true--changes in the law also prevent some lawsuits. But many factors go into our caseload, including actions taken by this body; and perhaps the easiest example of that is your decision to create felony DUIs. It was clearly a good public policy decision for Montana. But that one legislative action has resulted in scores of misdemeanor DUIs being appealed to our Court each year, because drinkers who drive can easily see what their future will hold as each misdemeanor conviction is added to their record. And

population increases and the simple fact that we live in an increasingly litigious society also factor into our caseload.

But the critical focus is not why our caseload has increased. The critical focus is that it has increased, and it is the people of Montana who are paying the price, by ever-lengthening delays in the final resolution of their cases at our Court. Because the simple fact is that the Court not only can't keep up, we're falling farther and farther behind in our ability to provide Montanans with both the access to justice and the timely administration of justice they are guaranteed by the Montana Constitution. SB 158 passed the Senate 46 to 2, and I believe the merits of, and need for, the appellate court nearly sell themselves.

But yes, there is a fiscal impact. And yes, I remain as thankful as I was during the years I lobbied this body that it is not my job to balance the budget, especially during times like these. But the overall fiscal impact of SB 158 on the state's budget is, I suggest, very small when measured against the fact that, by creating this appeals court during this Legislature, you can provide us with the ability to preserve and protect Montanans' constitutional right to the administration of justice without delay. I respectfully urge you to pass SB 158 for the people of Montana.

In closing, I'd just say that I am proud, and you and the people of Montana have every right to be proud, of the quality of justice the Montana judiciary--and its excellent staff--provides. We are, and will remain, committed to meeting the challenges of providing justice in an accessible, fair, timely and cost-effective way for the people of Montana--with the hope that, during this new century, we can finally achieve the long-sought constitutional ideal of equal justice under the law.

Thank you again for this opportunity to visit about the state of the judiciary, and best wishes from our branch to yours for a productive and successful session.